December 12, 2011

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Sent electronically via permitsR3ES@fws.gov on December 12, 2011.

Re: TE02636A
NiSource Draft Environmental Impact Statement, Multi-Species Habitat Conservation Plan and Request for Incidental Take Permit

On July 16, 2009 NiSource, Inc. filed a request for an incidental take permit under the Endangered Species Act, seeking authorization for the take of ten species likely to be impacted by operations associated with a 15,000 mile network of gas infrastructure across fourteen states for a period of 50 years. This request includes a multispecies conservation plan which addresses the ten proposed Take Species (9 listed and 1 proposed); the Plan also provides measures to avoid impacts to 33 additional species. NiSource is seeking concurrence with its assertions that no take will result to these additional species if implemented in accordance with their multispecies habitat conservation plan. In addition, the materials submitted with this application include a green infrastructure assessment, as well as a multispecies habitat conservation plan prepared in collaboration with affected states which will be used to guide mitigation actions. NiSource also proposes mitigation funding provisions which vary according to the term of the permit issued. On April 30, 2011, the U.S. Fish and Wildlife Service (the Service) issued a Draft environmental impact statement and Biological Assessment for the NiSource Application. We submit these comments on the application, its associated documents and the draft EIS on behalf of National Audubon Society.

Audubon views long-term species and habitat protection as a critical conservation imperative. With mounting evidence of long term declines for once common and widespread species, it is clear that wildlife conservation efforts must evolve to address the deteriorating status of many species. This, in turn, must be accomplished within a context of dwindling high value habitat areas. As such, Audubon strongly supports landscape scale, multispecies conservation planning and mitigation approaches as the right direction for future protection efforts. At the same time, we are mindful of the large uncertainties presented by climate change and long-term landscape development and of the necessity of reviewing and adapting mitigation approaches over time to incorporate new scientific knowledge. For this reason, it is essential that long-term species management decisions not rigidly lock in to a given formulation based on knowledge that is, at

best, but a snapshot in time. The NiSource application offers a strong green infrastructure tool for mitigation planning coupled with a permit request framed in a way which will constrain the decisionmaking flexibility we believe is necessary for proper management of wildlife over a long time horizon. We urge the Service to avoid trading off important adaptive management flexibility for the other benefits proposed in this filing.

The following comments are based upon our review of the request for an Incidental Take Permit (ITP), the draft Environmental Impact Statement (EIS), the Multispecies Habitat Conservation Plan (MSHCP)and the related Implementing Agreement, and address several topics:

- The proposed 50 year term of the permit
- Limitations imposed by the No Surprises rule and treatment of changed circumstances
- The intent to apply the permit to up to 3250 miles of new pipeline
- The merits of permitting for new construction in combination with permitting of the operations and maintenance of existing facilities
- Sufficiency of the allotted funds for compensatory mitigation
- Incomplete consideration of impacts to affected avian species
- Benefits of the Green infrastructure network design for mitigation
- Concerns regarding Important Bird Areas

In submitting these comments, we recognize that the EIS is one step in a tiered, multiagency approval process that will provide for additional scrutiny and approvals by coordinating federal agencies such as FERC. Further, we understand that the scope of the EIS is limited. Specifically, it does not alter state-level approval requirements. It is likely though, that coordinating agencies will rely heavily upon the decisions rendered in the final EIS issued by the Service. It is also likely that this EIS will be viewed as precedent setting within the pipeline industry. In light of this, we believe it is of paramount importance that a proper balance is struck between permitting process efficiency and mechanisms for ensuring effective and necessarily flexible regulatory processes for wildlife management and compensatory mitigation.

The proposed term of the permit

The draft EIS examined three alternatives: (1) a No Action Alternative in which existing status quo permitting procedures remain unchanged, (2) a 50 year Incidental Take Permit and approval of the MSHCP, and (3) a 10 year Incidental Take Permit and approval of the MSHCP.

Under Alternative 3, the Service would re-examine the operating conservation plan to assess whether the mitigation approach is functioning as planned, whether biological goals are being met, and whether mitigation is compensating for the take that has occurred over the preceding 10 year period. A formal application review process would take place at that time, and the Service will make a determination as to whether any adjustments to the incidental take authority are required. Under Alternative 2, there would be no formal review process (with opportunity for public comment) built in by regulation. Alternative 2 provides less assurances regarding the potential for adjusting mitigation requirements in an adaptive fashion.

We recognize that the choice among alternatives 2 and 3 entails a mitigation trade off and that by selecting Alternative 3 the Service would be foregoing the front-end loading of the 50 years' mitigation which Nisource offered if Alternative 2 is approved. Nonetheless, we urge that the

Service opt for Alternative 3. In our view, the massive geographic scope of the request and its inclusion of new construction actions create too large a footprint, with too many potentially affected species, to undertake a grand experiment in multispecies habitat conservation on a 50 year timeline. The proposal shifts performance risk from the applicant to the Service's ESA program. It is not yet clear that the mitigation provisions for new construction and expansion actions are adequate for the 3000+ miles of new pipeline calculated for the fifty year horizon (page 12, Section 2 of the HCP). In our view, the 50 year permit is a non-starter. The decade-by-decade approach of Alternative 3 provides greater assurances of full and detailed reviews of species and habitat impacts and mitigation measure effectiveness; it thereby provides greater assurances of successful conservation of the Take Species across taxa, geography, and time.

The concerns above are pertinent to any of the taxonomic group(s) analyzed over any of the geographic areas, but are amplified in dynamic environments. A 50 year permit is ill advised in any circumstance but is grossly inappropriate for dynamic riverine and coastal habitats for the reasons described below.

The sandbars and coastal beaches on which interior Least Terns and Piping Plovers depend shift in availability and quality over a period of months to years, not decades. Particularly for these and other coastal and river-dependent species, the species exist in metapopulations, where habitat is regularly created and destroyed and populations shift in response to shifts in habitat presence, amount, configuration, and quality. Ecosystems shaped by water are naturally dynamic systems, and it is our static management and insistence on attempting uniform management of these habitats, as well as our disturbance in these systems, that has led species dependent on them to be imperiled. The very nature of these dynamic habitats requires active and adaptive management in order to protect the endangered, threatened, and declining species that depend on them; the ecology and biology render a 50 year blanket incidental take permit unacceptably risky and inappropriate.

Through natural processes such as flooding, sediment transport, drought, and river shifts, sandbars and prime feeding areas along the Mississippi River are regularly created and destroyed. Extended spring floods may inundate habitats for a nesting season, resulting in near-total nest failure for some species in some years. High water flows transport and deposit large amounts of sediments which may create new, predator-free sandbars, as well as scouring existing sandbars free of vegetation and predators. Drought may expose more habitat, resulting in increased nesting area in some years. Human alterations to the Mississippi River have resulted in more inundation and pooling, reducing habitat availability for nesting birds in many years. Active management including dike-notching has resulted in increased habitat availability in static, predictable locations. However, creating a stable nesting resource also means that those sandbars provide some of the most utilized nesting habitat for least terns along the Mississippi River, in part helping interior Least Tern populations to recover in recent years. However, the increased river stages predicted by climate change models could result in increased flooding and nest failure, even if created habitats remain stable.

Our coastal beaches are similarly affected by natural and anthropogenic factors. Hurricanes and strong winter storms move sediment, destroy vegetation, and overwash habitat, creating and destroying habitat continuously for beach-dependent species. Much of our U.S. population also lives within 50 miles of our coastlines, and many others recreate on these beaches. Human disturbance and human-amplified predation have increased pressure on already threatened

populations, and residential, commercial, and energy development have destroyed unprecedented amounts of coastal habitat.

Even for more stable habitats such as the pine savannahs on which red-cockaded woodpeckers depend, predictive models of climate change show potential shifts in habitat in both latitude and altitude over the next 50 years. The magnitude of the shifts remains unknown, and is at least in part linked to anthropogenic activities such as energy development and use. This permit application does not allow enough latitude in renegotiating the terms in the event that habitat location, quality, and availability, and thus the species that depend on habitats, shift into areas that would be within the pipeline corridor.

Limitations Imposed by the No Surprises rule

Under the "no Surprises" rules and assurances that govern incidental take permits, applicants are protected against additional conservation and mitigation requirements being imposed during the permit period, even in circumstances which render the habitat conservation plan inadequate to conserve listed species. In the NiSource HCP, this is reflected through the following clause in Section 11.2.1.1.: "Where the MSHCP is being properly implemented and the Service deems that additional conservation and mitigation measures are required, the Service may require that NiSource implement such measures only if they do not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the MSHCP without the consent of NiSource."

While the listing of a species as either threatened or endangered will trigger new negotiations with the Service to amend the MSHCP, the ITP, and associated documents to reflect the changed status of the pertinent species, new habitat determinations are not similarly guaranteed comparable treatment. As stated in Section 1.5 of the Implementing Agreement, "The Service agrees that if critical habitat is designated for any MSHCP species and if NiSource is properly implementing the terms of the MSHCP, the Service will not require NiSource to commit to new, additional, or different conservation or mitigation beyond that provided for under the MSHCP and this Agreement."

These provisions, while statutorily required for ITPs, are unacceptable for a period as long as 50 years. On the basis of this alone, we believe a 50 year ITP is insupportable. At the same time that the Service, other federal agencies, and state agencies are establishing new adaptive management practices in order to better prepare for the management challenges of climate change, these No Surprises provisions increase the risk of inferior long-term species management when set in place for long permit periods. The apparent assurances provided by the permit application documents are not yet proven. Until we have the benefit of documented results and proven performance for the proposed process, prudence would dictate a shorter permit term with mandatory review and renegotiation. The Service should only consider the 10 year permitting described in Alternative 2, with its provisions for formal review, public input, and permit renegotiation. The 50-year permit request should be denied.

Intent to permit over 3000 miles of new pipeline

Although little discussed in the application, Nisource is seeking in this ITP to obtain permit covering a substantial amount of new infrastructure. Per the information provided in Table 2-1 on page 12 of the chapter "Covered Lands and Covered Activities," this would include up to

2000 miles of new large capital expansion projects and up to 1250 miles of medium capital expansion projects. The table below summarizes that information.

Expansion Activities Requested for Inclusion under the ITP

Category	Requested Covered Actions	Scale and Frequency of Action	Cumulative Covered Expansion Actions
Capital expansion – medium projects	Construction of new pipeline, compressor station additions, and/or wells	25 'medium projects' each consisting of up to 50 mi. of pipeline, 4 compressor station additions, or 30 wells	1250 miles of pipeline or 100 compressor station additions or 1500 new wells
Capital expansion – large projects	Construction of new pipeline	10 'large' projects each consisting of up to 200 mi. of pipeline	2000 miles of new pipeline

Information compiled from Table 2-1 of the HCP.

The addition of 3250 miles of pipeline would represent a 20% increase in the NiSource pipeline network. This is a major expansion which must receive full environmental review under the law given the potential for environmental harm in as yet unidentified locations throughout the network.

Need for separation of permitting for operations and maintenance and for new construction
The NiSource MSHCP addresses impacts resulting from three categories of activities:
(1) operations and maintenance, (2) safety-related repairs, maintenance, and replacements, and (3) expansion or new construction. The permit defines the covered lands included in its request as the existing pipeline right of way plus adjoining lands to a distance of a half mile on either side plus new lands within twelve counties for the construction of new underground storage facilities.

The potential scale and character of disturbance for new construction actions are different in kind from those for ongoing operations and maintenance and safety-related repairs. Accordingly, it would be reasonable for different determinations to be made with respect to pertinent features of this HCP for these two categories of activities. More liberal parameters can be appropriate in those cases where less risk is involved.

At a minimum, construction outside the currently cleared ROW should be treated differently than other actions covered in this plan. Since new construction and expansion are relatively likely to create disturbance of previously undisturbed lands that may be serving important ecological functions as valuable habitat, these activities must be regulated in a fashion that addresses these threats from habitat loss and fragmentation. Conversely, operations and maintenance activities that cause no habitat losses or fragmentation can be permitted in a fashion that is more streamlined. In our view, streamlined permitting make the most sense in cases where the permitting is an extension of permitting processes that have been in place for some time and where there is a proven record of performance for the measures involved as well as a proven record of performance on part of the applicant. In these circumstances, where there is a higher degree of certainty regarding the impacts and the effectiveness, a risk-based approach which facilitates streamlined permitting can be appropriate and beneficial. From a biological perspective, maintenance and repair of existing infrastructure may also be necessary

to prevent environmental harm, while new construction will necessarily expand the footprint of habitat and human disturbance, and could be particularly detrimental when species are most dependent on critical habitats.

These distinctions are important and should shape the Service's response to this request. In particular, we believe a 50 year permit term is insupportable with regard to new construction and expansion activities outside the presently used ROW. The USFWS should absolutely deny the request to apply a 50 year permit to new construction and expansion actions. We do not support a permit of a 50 year term under any circumstances, but find it particularly in conflict with NEPA principles and sound wildlife/habitat management when applied to new construction in undisturbed areas.

Sufficiency of proposed mitigation funds

In Section 8.3 of the HCP, NiSource proposes to provide $784,595 in mitigation funding to cover 50 years' worth of mitigation for operating and maintenance actions. It is impossible to judge the adequacy of this amount without further detail on the level of mitigation funding that has been required historically. It is also impossible to determine how the aging of the infrastructure during the fifty year horizon might affect the level of mitigation funding that would be appropriate if the level or type of O&M activity changes over time. Further detail to support this funding level should be provided.

Additional funding is to be provided annually to compensate for certain construction and non-recurring maintenance activities. As stated in Section 8.2.2, total compensatory mitigation for 'project-specific' mitigation over the 50 year horizon is projected to range as high as $27,848,800. It is our understanding that this figure is an estimate only, and not a binding number establishing actual funding; actual compensatory mitigation actions and costs will be computed on a year-ahead basis over the lifetime of the permit, funded through a trust fund and adjusted as adaptive management findings and changed circumstances dictate.

The bulk of the mitigation expense for the covered activities will be addressed through a year ahead planning and funding mechanism. All mitigation funds will be administered by NFWF. The provisions appear conceptually sound for the medium capital expenditure projects. However, Section 8.4.1 indicates that the funding elements for the Section 7 permitted large projects potentially provide as little as 15 days notice to the Service while the HCP asserts that prior to commencing construction Nisource shall estimate take, mitigation obligations, and monitoring costs, and shall deposit sufficient funds to cover those costs. This discussion does not describe a process for Service review and approval of these estimates. This must be detailed further in the event of disagreement between Nisource and the Service on the appropriate amount of mitigation funding.

Assessment of threats to affected avian species

The Nisource MSHCP addresses two categories of species: 'take species' and 'non-take species'. Non-take species are further split in to two groups, those species for which NiSource will implement minimization measures to avoid take and those species upon which the covered activities will have 'no effect.' Despite identifying three avian species as potentially impacted in the covered lands (pages 61 and 62 of Appendix F), the application for the most part is silent on potential avian impacts. The Implementing Agreement lists the interior least tern as a non-take species to be addressed via implementation measures to avoid take. No other avian species are

addressed in the Implementation Agreement. Appendix F of the Habitat Conservation Plan lists 24 species which NiSource has indicated it believes its action will have no effect (Table F-1). None of these species are avian species. It further lists 9 species which it concludes will be affected but for which its actions are "not likely to adversely affect" the species. One bird species, the interior least tern, is identified in this list. (Table F-2). Contradicting this, on page 102 of Appendix F of the Habitat conservation Plan, the red cockaded woodpecker is listed as "likely to be adversely affected."

For each of these HCP groups, the language in Appendix F states: "The intent of this documentation is to negate the need to further consult with the Service on these species for NiSource activities within the covered lands for the duration of the permit period." Given that, by its own admission, NiSource's covered actions are likely to adversely affect the red-cockaded woodpecker, it is insupportable to issue an ITP that fails to address this species.

In general, we are concerned that the documents do not give more thorough consideration of impact avoidance and mitigation for the least interior tern, the red-cockaded woodpecker, and the piping plover. Further explanation is required by the Service to demonstrate the appropriateness of treating the species as non-take species. Based on the available information, we urge the Service to include the red cockaded woodpecker, interior least tern, and the piping plover as Take Species for this ITP. Specific comments on these species are provided below.

Interior least tern

For Kentucky and Tennessee, the pipeline does not cross significant least tern habitat. In Mississippi, there are numerous sightings of least terns from the Cleveland, Grenada, Greenwood, Indianola, and Greenville areas. These sightings have ranged from a few individuals to up to 450 individuals at a time, but do not show consistent patterns over time.

However, data from the U.S. Army Corps of Engineers shows a significant proportion of interior least terns nesting on sandbars in the Mississippi River from Cairo, Illinois, south to Vidalia, Louisiana. Recent analyses by Audubon show that the highest concentrations of interior least terns use three of the sandbar complexes near the Mississippi-Louisiana-Arkansas border, where the pipeline runs and incidental take could occur. Each complex contains more than 1% of the global population of interior least terns during the breeding season; the three complexes together easily support more than 5% of the total global population.

The pipeline crossing in East Carroll Parish, for example, may go through colonies that have numbered between 600 and 800 adults, producing between 200 and 300 nests over the past 5 years. In addition, further south within the same parish, up to 375 adults have produced up to 53 additional nests. Given known dispersal distances, the terns on this one complex of sandbars are part of the same population year to year, and easily comprise more than 1% of the global population of interior least terns. While the concentrations in Madison Parish, Louisiana are not as large, there are still hundreds of adults producing dozens of nests during good years where work on the NiSource pipeline may occur.

Piping Plover

Pages 86-87 of the Biological Assessment, in Appendix F of the Draft EIS, provide a rationale for not including the Piping Plover in the HCP. Here, a determination was made, based on an evaluation of the impacts of particular activities in parts of species ranges, that there will either

be no impact or no lasting effect on Piping Plovers. It is difficult, without more explicit spatial information or more knowledge of the duration, intensity, and recovery period of activities, to determine if this analysis is accurate.

Our assessment is that risks to this species warrant its inclusion as a Take Species. The pipelines do not intersect significant piping plover habitat in Kentucky, Tennessee, and Mississippi. However, the pipeline does go through several global IBAs in Louisiana, two of which contain globally important populations of piping plovers. The Atchafalaya Delta IBA has had up to 21 piping plovers documented during a recent International piping plover census. Barataria-Terrebonne IBA has supported global populations of piping plover, ranging from 33 to 65 wintering individuals during each survey year since 2001. Active Delta IBA supported 40 wintering piping plovers during the 2001 international piping plover Census, and the Chenier Plain IBA has supported between 35 and 55 wintering individuals during recent survey years. Overall, the Louisiana coast, excluding the barrier islands, may support over 100 piping plovers during a given count during the winter. This is more than 1 % of their global population. While the permit indicates that piping plovers will move in response to disturbance, studies have shown that disturbance to shorebirds on their wintering grounds can reduce breeding success in the following season.

In light of the globally significant populations of piping plovers in the Louisiana portion of the covered lands and the very long proposed permit term, we believe the ITP should be amended to add piping plovers as Take Species.

Red cockaded Woodpecker
For Kentucky, Tennessee, and Mississippi, Nisource pipelines do not appear, from the available map, to cross through any known concentration areas for red-cockaded woodpeckers. In Louisiana, Nisource pipelines likely transect parts of East Kisatchie IBA, and may affect red-cockaded woodpeckers. As recently as 2006, 70 nests of red-cockaded woodpeckers had been located in the East Kisatchie IBA. The number of nests there had been steadily increasing since at least 2001 due to intensive management by staff at the U.S. Forest Service. This number of nests is sufficient for the site to be globally important for red cockaded woodpeckers.

The evaluation for red cockaded woodpeckers provided on pages 87-89 of the Appendix F of the Draft EIS. For red cockaded woodpeckers, a determination was made that likely adverse effects will occur, impacting breeding success, involving take, and negatively affecting population numbers. More than two dozen covered activities were identified that are likely to produce negative impacts with the following comments: "The RCW is particularly susceptible to noise or other physical disturbance in their habitat. Proposed activities that impact the breeding, feeding, and sheltering needs of these species may result in demographic consequences, including population numbers, and reproduction effects (e.g., reduced recruitment) of these species." As a result, the species is listed as Likely Adversely Affected in Table 6 of Appendix F of the draft EIS. Given this determination, it is baffling that red cockaded woodpeckers are not included as a Take Species in the requested take permit. We recommend the addition of the red cockaded woodpecker as a take species under this permit.

Best Management Practices (BMPs) proposed to avoid or minimize effects on Red-cockaded Woodpeckers are listed in at the end of Table G in the Habitat Conservation Plan. These BMPs, including surveys to ensure that take is minimized and any take is documented, fail to address

the potential for population growth for the species. Following range-wide population surveys in 2006, it was determined that populations had yet to reach target levels. However, while take is to be minimized through NiSource's HCP, the BMPs are not entirely protective of mature and maturing potential nesting trees, one of the limiting resources for populations that must grow in order for delisting to occur, nor is it protective of potential foraging areas that are not currently within .5 miles of an active nest. This type of management is short-sighted, in allowing further fragmentation and loss of nesting habitat when increasing populations are desired, and increasing populations will need additional slow maturing habitat. We believe additional mitigation measures should be incorporated in to the plan for the red-cockaded woodpecker.

Given the wide variety of potential impacts to habitats of global importance, we recommend species-by-species analyses for specific capital expansion projects at the time that the location and extent of these projects becomes known. More detailed, species-level review is necessary to properly determine the magnitude of these future impacts.

Multispecies conservation plan implementation

The NiSource proposal advances an approach to mitigation intended to facilitate more holistic, strategic approaches and more effective outcomes. The green infrastructure network design approach is science-driven, taxonomically broad, geospatially explicit, and collaboratively developed. This is an impressive industry effort to better incorporate ecosystem knowledge and conservation objectives in to corporate mitigation practice, and goes above and beyond the basic requirements for obtaining necessary permits for NiSource's operations.

Audubon strongly supports landscape scale conservation planning and strategic approaches to mitigation. The proposed Green Infrastructure approach offers a means to maximize benefits to multiple species while providing require mitigation for take species in the HCP, but only so long as this mitigation targeting satisfactorily serves the conservation needs of the take species and take is fully avoided and minimized before mitigation is considered. It would be problematic to opt for mitigation in an area that is less well-suited to the take species on the basis of its value to a suite of other species; this must not be the outcome of the prioritization process. (For example, we note that the green infrastructure approach does not reflect habitat areas for the least tern or the piping plover.) On the other hand, if two mitigation alternatives are available, both equally suitable to conservation of the take species, then directing the mitigation to an identified multispecies priority area is a desirable outcome.

That being said, with the stipulation of the necessary primacy of the mitigation benefit being directed to the individual Take Species, the proposed mitigation framework has noteworthy strengths. The emphasis on ecosystems as a whole and the large geographic scope are distinct assets of this framework. The expansive interstate geographic area makes it feasible to develop mitigation activities that reflect expected range shifts. The consideration of connectivity as well as hubs reflects important conservation planning principles. The multitaxonomic prioritization based upon state-level conservation priorities builds in important knowledge from on-the-ground conservation practitioners.

It is important that the green infrastructure design plan be updated with regularity so as to appropriately direct mitigation funds over time to high value areas. This initial green infrastructure design should not become a static framework for mitigation actions for the entire 50 year period. As land use patterns, species ranges, and scientific information change over

time, these changes must be reflected in the green infrastructure maps which will be used to direct mitigation investments. Updating every ten years, just in advance of the permit renewal process in Alternative 3, would be beneficial.

Concerns about Important Bird Areas

In every state, areas of importance to the conservation and management of the birds of the Americas have been identified and designated as Important Bird Areas (IBAs). A number of these areas are in, or proximal to, the Covered Lands in this application. We have highlighted IBAs of concern within the scope of these Covered Lands.

In Louisiana, the NiSource pipeline passes through at least 9 Important Bird Areas, 8 of which support globally important populations of birds. Six of these support globally important populations of threatened or endangered species including interior Least Terns, Piping Plovers, or Red-cockaded Woodpeckers, as well as Wilson's Plovers, which may be a candidate for listing under the Endangered Species Act in the next several years. These Important Bird Areas include some of the most extensive remaining marsh and bottomland forest habitat in the continental United States. These Important Bird Areas are also experiencing the most significant wetlands loss in the lower 48 states, perhaps the world. While some of the wetland loss is a direct result of mismanagement of the Mississippi River, a great deal of it is a result of pipelines and canals from the oil and gas industry.

In Mississippi, the pipeline runs near or through several Important Bird Areas. Eagle Lake supports significant concentrations of waterfowl in winter, including up to 1500 American white pelicans. Hillside National Wildlife Refuge has significant numbers of waterfowl (over 125,000 at times) as well as marsh and wading birds. White's Lane is a significant heron rookery which can support up to 5,000 breeding pair of mixed heron and egret species. It has been considered for purchase by USFWS for inclusion into the Panther Swamp National Wildlife Refuge. White's Lane supports the largest white ibis rookery in Mississippi. Panther Swamp National Wildlife Refuge is primarily bottomland hardwoods in the Yazoo backwater. At over 38,000 hectares, it supports continentally important populations of prothonotary warblers, and globally significant populations of red-headed woodpeckers have been documented.

Delta National Forest is the only national forest comprised of bottomlands in the United States. This site provides important habitat and food for wintering and migrating waterfowl, neotropical migratory songbirds, and forest-dependent raptors. In Mahannah Wildlife Management Area, flooded fields and young reforested areas support waterfowl and neotropical migratory songbirds, including the Audubon WatchList painted bunting. Vicksburg National Military Park, an urban, upland forest IBA, consists of loess hills that support significant concentrations of passage and breeding neotropical migrants including worm-eating, Swainson's, Kentucky and hooded warblers, summer tanagers, painted buntings, and wood thrush. Fall migrating raptors also follow the Loess Hills bluffs that follow the eastern edge of the Mississippi Delta region, providing the only known fall migrating raptor concentration in Mississippi.

Shipland Wildlife Management Area provides bottomland hardwood forest habitats as well as a significant complex of sandbars in the Mississippi River, the Ajax Bar complex. This site is important for the federally endangered Interior Least Tern. One of the management recommendations for this site is that human disturbance should be reduced during the Least Tern breeding season.

From the spatial data available, it does not appear that the pipeline crosses any IBAs in Kentucky. In Tennessee, it may pass through three state level Important Bird Areas, including Old Hickory Lake, Shelby Bottoms Greenway and Nature Park and Shelby Park, Radnor Lake State Natural Area, and Monsanto Ponds IBAs. The Nature Park and State Natural Area are good sites for passage migrants and breeding birds, and contain some species of Tennessee 'In need of management' species. Detailed bird data for these sites are sparse and show low numbers of bird species of conservation concern. The sites are significant mostly in providing mature forest or riparian habitat in a largely urban landscape. Monsanto Ponds provides wetland habitat which is rare in middle Tennessee, and supports some populations of Tennessee In Need of Management species including bald eagle, least and American bitterns, sora, and common moorhen. The site also provides waterfowl habitat. Old Hickory Lake supports the largest breeding colonies of wading birds in the Central Basin, with totals of all waterfowl in winter numbering in the hundreds.

In Indiana, NiSource pipeline runs near or through a few state-level IBAs. One global IBA near the pipeline route supports 4,000 Sandhill Cranes and over 200 Rusty Blackbirds. Another global IBA a bit further south supports between 10,000 and 35,000 Sandhill Cranes annually during migration, as well as being an area in which some of the experimental population of Whooping Cranes may be found.

Ohio is heavily impacted by NiSource infrastructure, with by far the densest footprint of pipeline infrastructure across the NiSource area. Current NiSource pipelines intersect 23 of the 62 Important Bird Areas in Ohio. The underground storage facilities will be created in Ashland, Fairfield, Hocking, Knox, and Richmond counties. The anticipated expansion of underground storage facilities in these counties poses a threat to 8 IBAs including Funk Bottoms, Mohican Habitat, Pickering Ponds, Clear Creek, Wayne National forest, Pleasant Hills, and Mansfield Lamm Airport. Many other IBAs are affected by the covered lands centered on existing pipelines; impacts to Ohio IBAs will be a fairly high likelihood for covered activities in Ohio.

In Pennsylvania, similar numbers of IBAs are likely to be affected. The areas most likely to be affected are: Allegheny Front, Callen Run Research Area, Codorus State Park, Enlow Fork, Hay Creek- French Creek Forest block, Kittatinny Ridge, Laurels, King Ranch and Stroud, Lower Buffalo Creek Watershed, Moraine State Park, Mount Zion-Piney Tract, Octoraro Reservoir, Raccoon Creek Valley and State Park, South Mountain, Southern Adams Grasslands, Southern Sproul State Forest, Tuscarora Ridge, Tussey Mountain, Unami Creek Valley, Upper Delaware Scenic River, and Yellow Creek State Park.

In addition to these designated IBAs, Audubon seeks fuller environmental review of impacts in the northcentral region of the state designated as the Pennsylvania Wilds. New analyses are highlighting the importance of swaths of the mature forest lands in this region for a dozen or more neotropical migratory bird species. New IBAs will be designated around these core habitat areas, using the recent scientific data.

In Maryland, 10 IBAs are likely to be affected, these with continentally important populations of several bird species. Among these, the Cerulean warbler appears most likely to be adversely affected by Nisource covered activities, with five of the threatened IBAs supporting this species.

Jennings Randolph Lake, Dan Mountain, Green Ridge, Patapsco Valley, and Susquehanna River IBAs collectively are known to support over 600 Cerulean Warblers. Youghiogheny Valley and Green Ridge IBAs support key populations of wood thrushes, and the Lower C&O Canal supports globally significant populations of rusty blackbirds. Continentally important populations of prairie warblers and worm eating warblers are found at the Green Ridge IBA, while Pleasant Valley, Allegany-Garrett Grasslands are important for red headed woodpecker and the Henslows sparrow, respectively.

In New York, the NiSource covered lands involve six Important Bird Areas that support at-risk, state-listed species: Cannonsville/Steam Mill area, Queen Catherine Marsh, the Center at Horseheads Field, Harriman and Sterling Forests, Mongaup Valley, and the Upper Delaware River. Of these six Important Bird Areas, all except Cannonsville are faced with more than five percent of their area being within the covered lands under the requested permit. Harriman and Sterling Forests and Mongaup Valley have the largest acreages affected, but Horseheads Field is the most heavily affected as a percentage of the site's total acreage. Under the NiSource request, 79% percent of this site would fall within the permit's covered lands. Horeseheads Field is an important site for the at-risk grasshopper sparrow. Mongaup, Upper Delaware, and Cannonsville/Steam Mill are used by bald eagle populations, Queen Catherine Marsh is an important site for the Least Bittern, and the Forests are important for a number of species including Cooper's hawk, wood thrush, blue-winged warbler, golden-winged warbler, and several other forest birds.

Maps of IBAs across the region are included in the Appendix. Overall, we feel the HCP and draft EIS need to do more to identify how avoidance of important habitats such as IBAs will be addressed over the 50 year period.

While we recognize that this EIS focuses primarily on impacts at a regional rather than site-specific scale, we are highlighting these specific geographic areas in order to inform subsequent analyses tiered off the current EIS. By flagging these high value areas that merit special consideration now, we hope to trigger their fuller consideration during subsequent tiered agency analyses as well as during project-specific reviews between the Service and NiSource. We request that the Service flag these specific areas to NiSource and to the cooperating agencies to help ensure that such scrutiny will take place. We call on NiSource, the Service, and cooperating agencies to avoid impacts to IBAs to the maximum extent possible with respect to activities covered under this permit.

Conclusion

As proposed, Audubon supports the issuance of an ITP based upon Alternative 3 with its 10 year permit time horizon. Alternative 2, with a 50 year ITP, creates unacceptably large ecological risks over the requested timeline, particularly by including new construction and expansion activities within a 1 mile wide pipeline corridor and by including an unspecified footprint for new underground storage areas.

It is our contention that the permitting of new construction should be unbundled from the permitting of operations and maintenance activities due to the very real differences in environmental impacts they produce. Again, we believe a risk-based approach calls for establishing different permit parameters for these fundamentally distinct classes of industry activity.

We do not believe the measures proposed in the HCP are sufficient to protect the interior least tern, the piping plover, and the red cockaded woodpecker over the 50 year horizon of this permit request and thus recommend that these species be included as Take Species.

Covered actions should, in all feasible cases, avoid Important Bird Areas. In addition, mitigation investments should, when protective of the Take Species, be directed to areas identified as higher value by the filed Green Infrastructure Network Design.

In summary, we recommend that the Service :

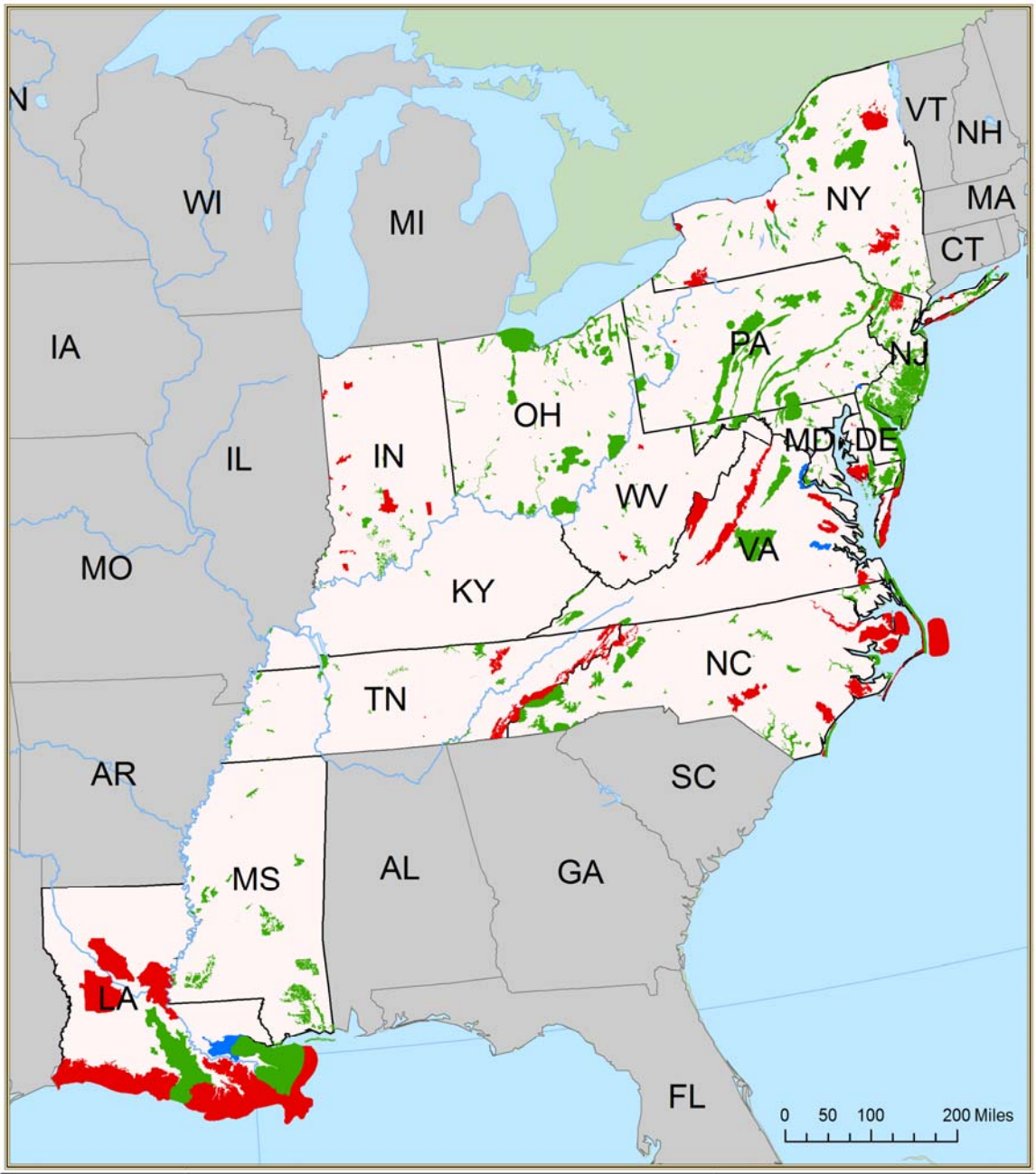
- Reject Alternative 2 which provides for a 50 year ITP
- Adopt Alternative 3, with a ten you permit, with the following revisions and conditions
- Exclude new construction and expansion activities from this ITP; establish a stand-alone ITP process for these activities
- Otherwise, clarify the process for determining mitigation needs for large capital expenditure projects permitted under Section 7 of ESA
- Require the inclusion of interior least tern, piping plover, and red cockaded woodpecker as Take Species under the ITP
- Direct cooperating agencies to include IBAs in subsequent tiered analyses of environmental impacts
- Approve the use of the Green Infrastructure network design approach submitted with this applications and encourage its use as a model for the industry.

We thank the Service for the opportunity to comment on this permit request and draft EIS.

Mike Daulton
Vice President
Government Affairs

ATTACHMENTS

Maps of Important Bird Areas
in the Affected States



Significance

- Global
- Continental
- State

Important Bird Areas

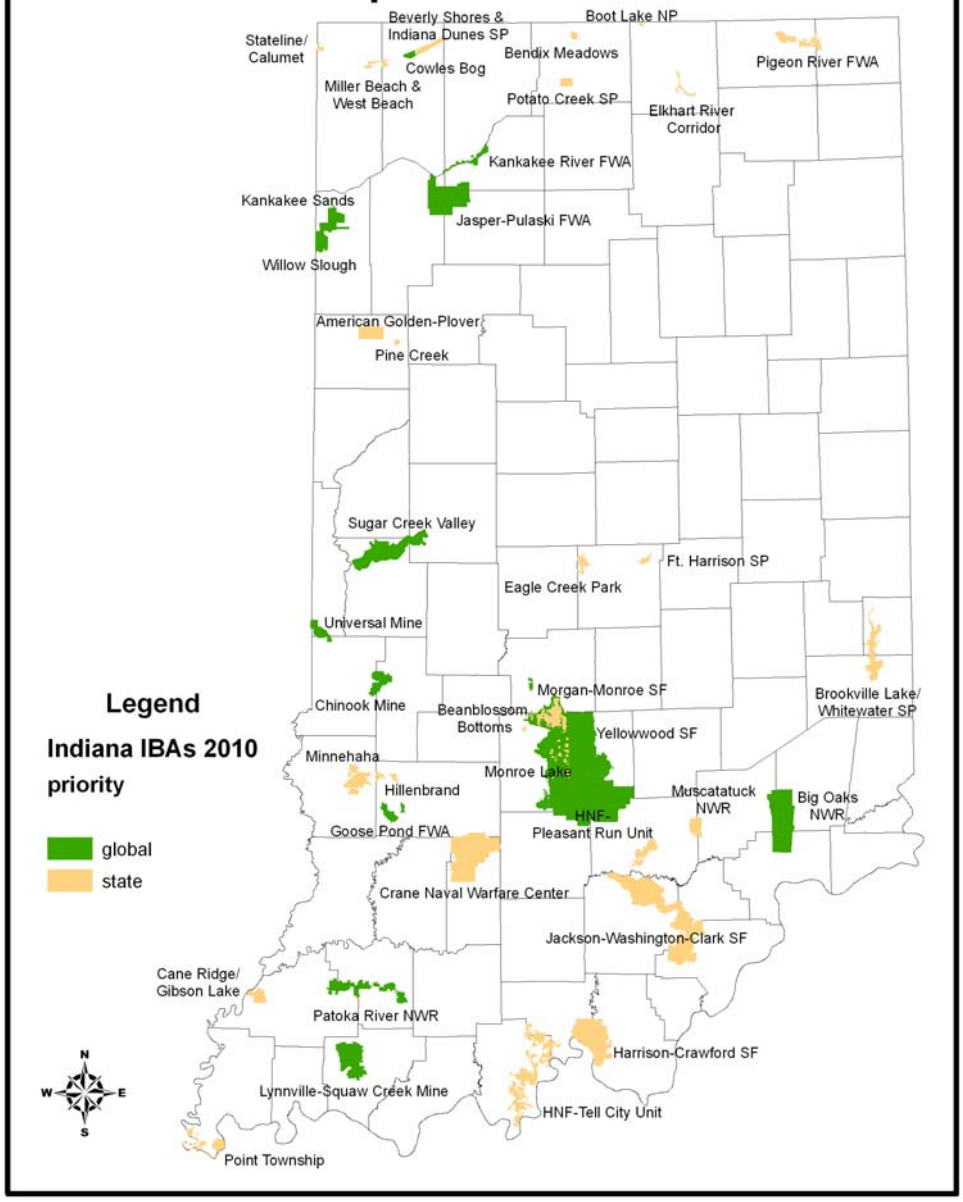
created in ArcMap 10

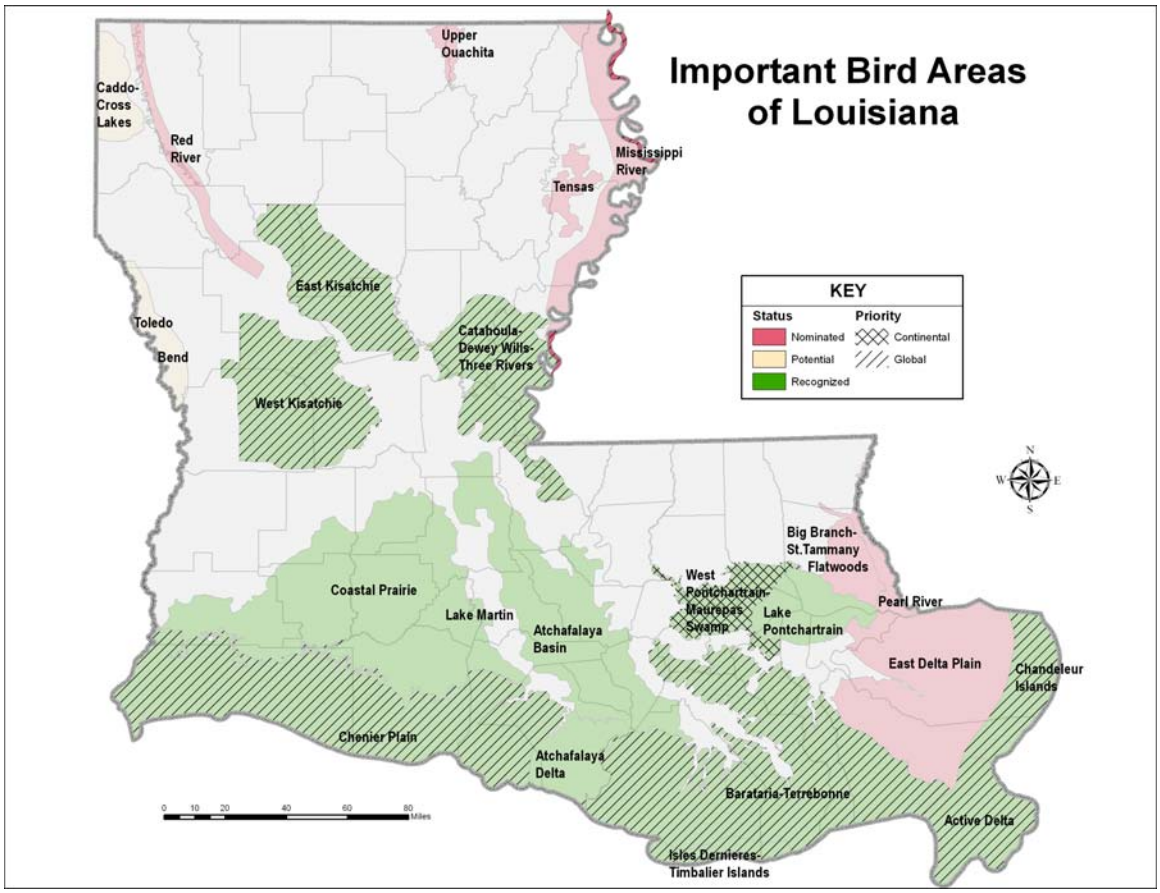
National IBA Office
November 2011
http://www.audubon.org/bird/iba/

Audubon

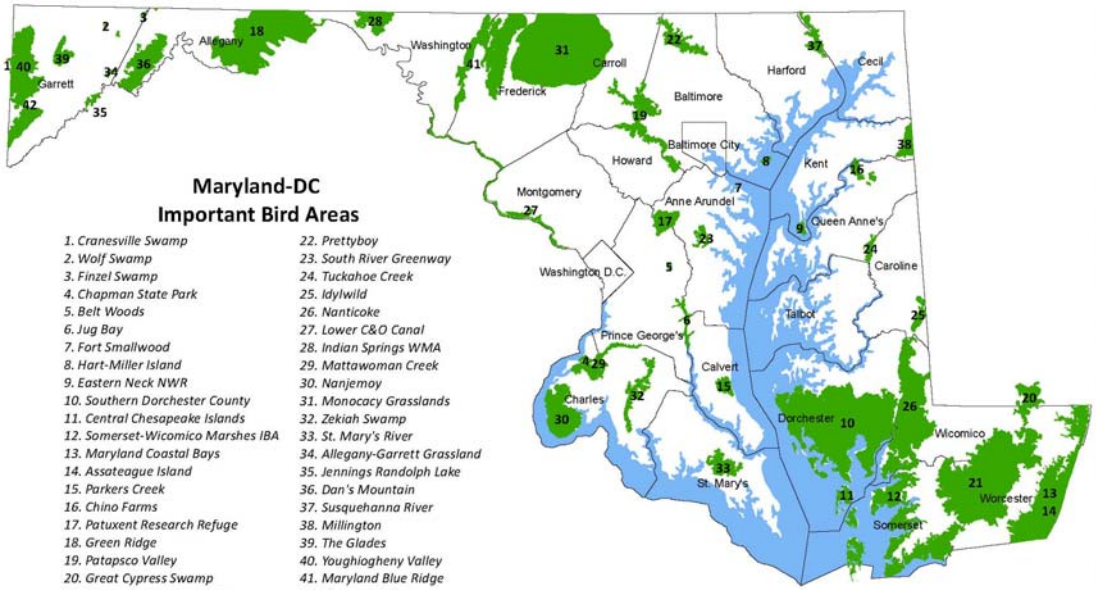
BirdLife IBA IMPORTANT BIRD AREA

Indiana Important Bird Areas




Important Bird Areas of Louisiana
Upper Ouachita
Caddo-Cross Lakes
Red River
Mississippi River
Tensas
East Kisatchie
Toledo Bend
Catahoula-Dewey Wills-Three Rivers
West Kisatchie
KEY
Status
Nominated
Potential
Recognized
Priority
Continental
Global
N
W
E
S
Big Branch-St.Tammany Flatwoods
West Pontchartrain-Maurepas Swamp
Lake Pontchartrain
Pearl River
Coastal Prairie
Lake Martin
Atchafalaya Basin
East Delta Plain
Chandeleur Islands
Chenier Plain
Atchafalaya Delta
Barataria-Terrebonne
Active Delta
Isles Dernieres-Timbalier Islands
0 10 20 40 60 80
Miles

Audubon MARYLAND-DC



Maryland-DC
Important Bird Areas

1. *Cranesville Swamp*
2. *Wolf Swamp*
3. *Finzel Swamp*
4. *Chapman State Park*
5. *Belt Woods*
6. *Jug Bay*
7. *Fort Smallwood*
8. *Hart-Miller Island*
9. *Eastern Neck NWR*
10. *Southern Dorchester County*
11. *Central Chesapeake Islands*
12. *Somerset-Wicomico Marshes IBA*
13. *Maryland Coastal Bays*
14. *Assateague Island*
15. *Parkers Creek*
16. *Chino Farms*
17. *Patuxent Research Refuge*
18. *Green Ridge*
19. *Patapsco Valley*
20. *Great Cypress Swamp*
21. *Pocomoke-Nassawango*
22. *Prettyboy*
23. *South River Greenway*
24. *Tuckahoe Creek*
25. *Idylwild*
26. *Nanticoke*
27. *Lower C&O Canal*
28. *Indian Springs WMA*
29. *Mattawoman Creek*
30. *Nanjemoy*
31. *Monocacy Grasslands*
32. *Zekiah Swamp*
33. *St. Mary's River*
34. *Allegany-Garrett Grassland*
35. *Jennings Randolph Lake*
36. *Dan's Mountain*
37. *Susquehanna River*
38. *Millington*
39. *The Glades*
40. *Youghiogheny Valley*
41. *Maryland Blue Ridge*
42. *Pleasant Valley*

Revised October 2011

Intersection of NiSource MSHCP Covered Lands and New York Important Bird Areas

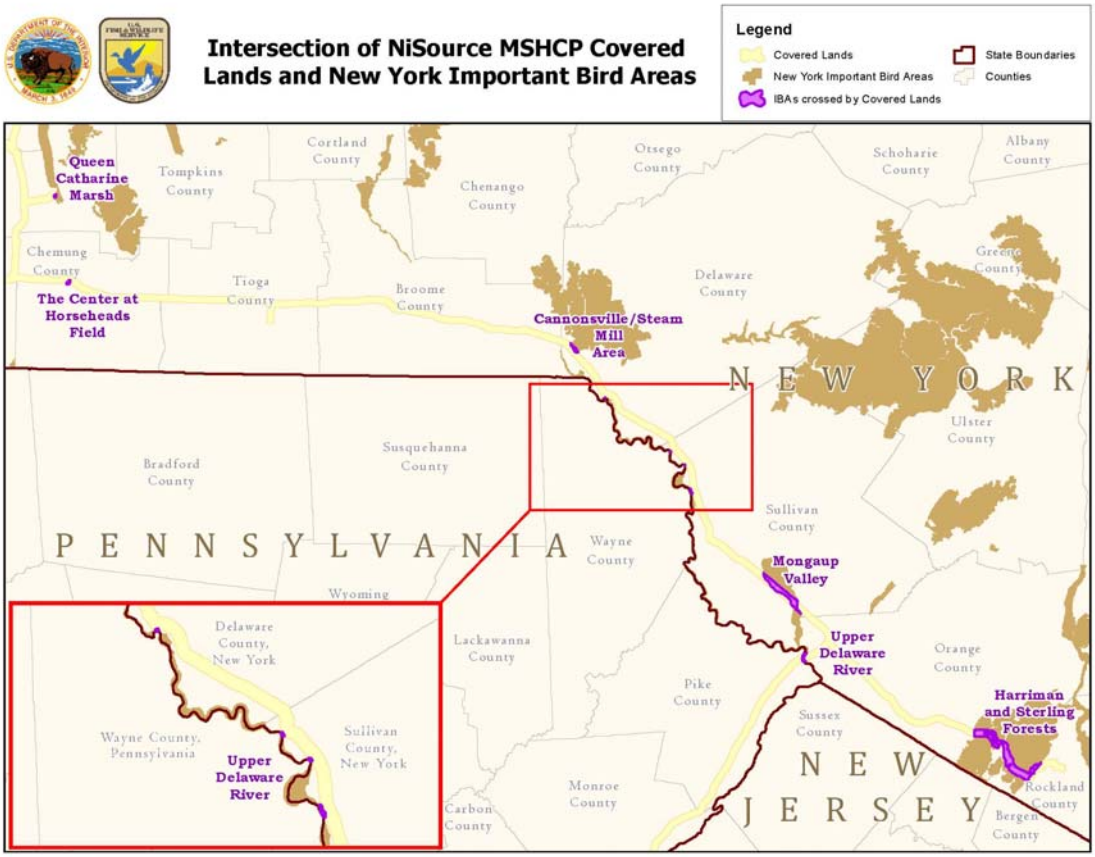
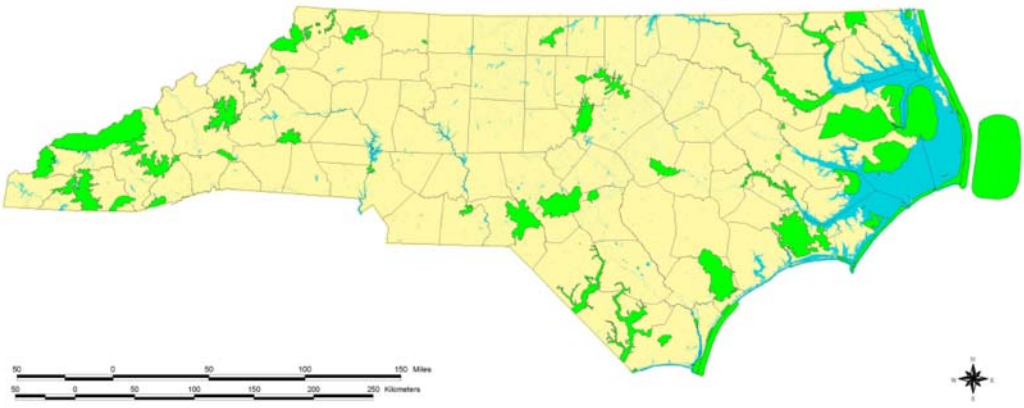
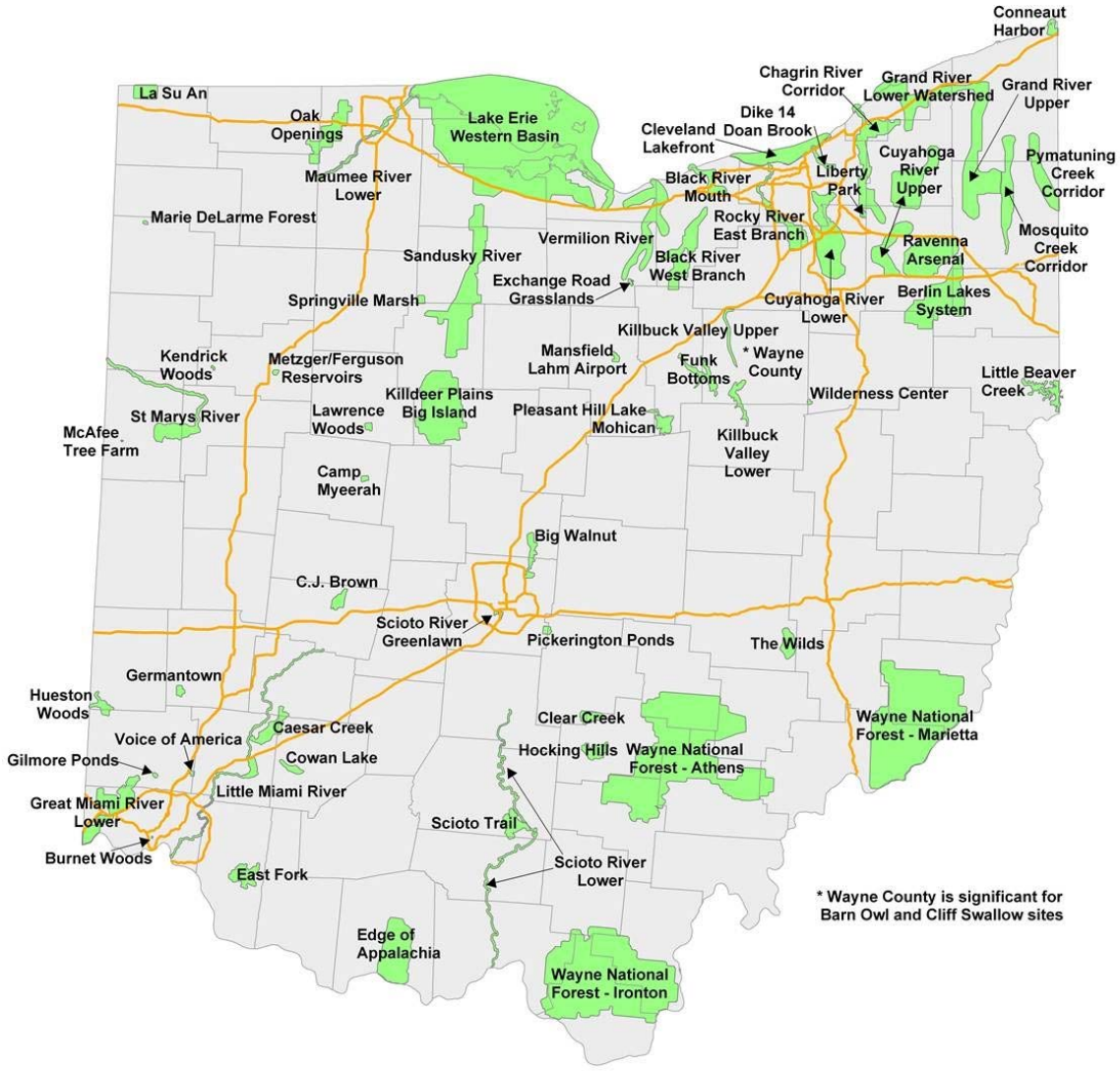


Figure 1—North Carolina's Important Bird Areas 2004

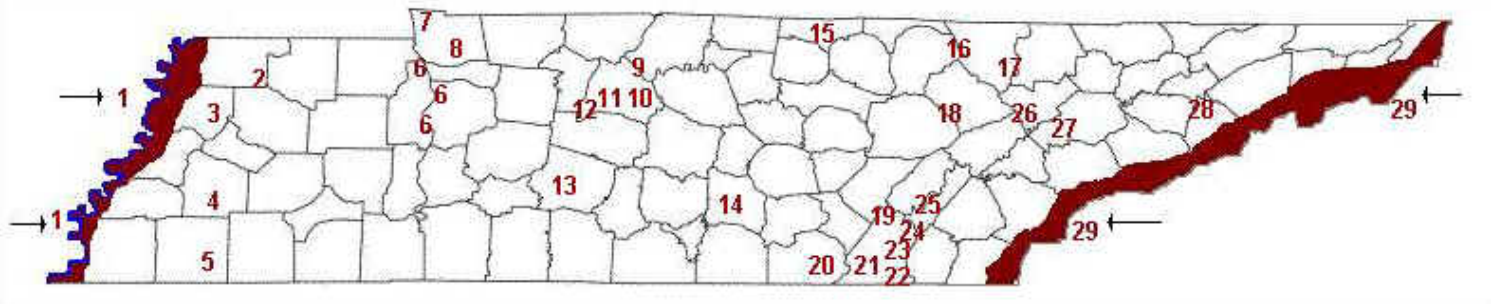


IMPORTANT BIRD AREAS OF OHIO




Important Bird Areas of Pennsylvania
Presque Isle State Park
Roderick Wildlife Preserve - SGL 314
Presque Isle Bay Martin Roost
ERIE
Cussewago Bottom
Hickory Creek / Hearts Content Natural Area
Akeley Swamp
WARREN
Conneaut Marsh - Geneva Marsh
CRAWFORD
Oil Creek State Park
MCKEAN
Tionesta Scenic and Research N. A.
Pymatuning Hartstown Complex
FOREST
Callen Run Research Area
VENANGO
Cook Forest State Park
ELK
CAMERON
Tamarack Swamp
POTTER
Pine Creek Gorge Natural Area
Marsh Creek Wetlands (The Muck)
TIOGA
BRADFORD
SUSQUEHANNA
Upper Delaware Scenic River
Wyoming State Forest & World's End SP
North Mountain - Ricketts Glen State Park
WAYNE
Shenango Reservoir
MK Goddard State Park
MERCER
CLINTON
LYCOMING
SULLIVAN
WYOMING
Shohola WMA SGL 180
Pocono Lake Preserve
PIKE
Quehanna Wild Area
LUZERNE
Hickory Run State Park
Pennsy, Black & Celery Swamps - SGL 151 & 284
CLARION
JEFFERSON
Mount Zion (Piney Tract)
Southern Sproul State Forest
MONTOUR
COLUMBIA
MONROE
Promised Land State Park & Bruce Lake N.A.
CLEARFIELD
Black Moshannon State Park & State Forest
CENTRE
Bald Eagle Ridge
UNION
Susquehanna Riverlands
Long Pond Preserve
LAWRENCE
BUTLER
McConnell's Mill State Park
The Glades - SGL 95
Buffalo Creek Valley
The Barrens at Scotia - SGL 176
The Hook Natural Area
NORTH-UMBERLAND
Hawk Mountain & Kittatinny Ridge
BEAVER
ARMSTRONG
INDIANA
Canoe Creek Watershed
SNYDER
Tall Timbers, Snyders-Middleswarth N.A.
St. Anthony's Wilderness - SGL 211
SCHUYLKILL
LEHIGH
Green Lane Reservoir
HUNTINGDON
Yellow Creek State Park
JUNIATA
DAUPHIN
Lake Ontelaunee
Unami Creek Valley
ALLEGHENY
CAMBRIA
BLAIR
Rothrock State Forest & Stone Mountain
Quakertown Swamp - SGL 139
Raccoon Creek Valley & State Park
Allegheny Front
Frankstown Branch
PERRY
Hershey Special Habitat
BERKS
Blue Marsh Lake
BUCKS
WESTMORELAND
LEBANON
Peace Valley Park
Tuscarora Ridge & The Pulpit
Powdermill Nature Reserve
WASHINGTON
Middle Creek WMA
Glen Morgan Lake
Hay Creek-French Creek Forest block
Lower Buffalo Creek Watershed
CUMBERLAND
Sheets Island Archipelago
Creek Rd. Area
Great Marsh
Lake Somerset
BEDFORD
Tussey Mountain
Conejohela Flats
CHESTER
Fairmount Park/ Benjamin Rush State Park Complex
FAYETTE
ADAMS
Enlow Fork -SGL 302
GREENE
SOMERSET
FULTON
FRANKLIN
YORK
Kiwanis Lake Rookery
Youghiogheny Valley, Ohiopyle State Park
Octoraro Reservoir
Laurels, King Ranch and Stroud
Upper Ridley-Crum Creek
South Mt. - Caledonia SP & Michaux SF
Southern Adams County Grasslands
Codorus State Park
State Line Barrens
Lower Susq. River Gorge Conowingo/Muddy Run
IBA Core Boundaries
IBA Conservation Boundaries

IMPORTANT BIRD AREAS OF TENNESSEE



Virginia Important Bird Areas and Species of Conservation Concern